IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

ORDER.

BHANWARA RAM. V. JUDGE, LABOUR COURT, JODHPUR AND OTHERS.

S.B.CIVIL WRIT PETITION NO.3511/2003.

DATE OF ORDER: 16.2.2005

PRESENT.

HON'BLE MR. JUSTICE R.P.VYAS

Mr.Sandeep Shah, for Petitioner.
Mr.D.C.Sharma, for Respondents No.2 and 3.

BY THE COURT:-

The instant petition is directed against the award dated 1.4.2003 (Annexure 1) passed by the Labour Court, Jodhpur, in Labour Dispute Case No.40/99. The petitioner has prayed that the impugned award dated 1.4.2003 (Annexure 1) may be declared illegal and the same may be quashed and set aside.

Brief facts of the case are that the petitioner was appointed on 3.12.1992 under the respondent – university on the post of casual labour on muster-roll basis. He worked on the aforesaid post with honesty and dedications. During his entire tenure of service, his work was found satisfactory and no complaint was received by the respondent. He worked under the respondent-university continuously from the date of his initial appointment till 1.3.1996, when his services were terminated by a verbal order, without assigning any

reason and without complying with the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act, 1947').

Thereafter, the petitioner raised a labour dispute and approached the conciliation officer for settlement of the dispute. The conciliation officer issued notice to the respondents – university for settlement of the dispute, but the respondents failed to appear before the conciliation officer, so a failure report was sent by the conciliation officer to the appropriate Government. Thereafter, on 31.12.1998, the appropriate Government referred the dispute for adjudication to the Judge, Labour Court, Jodhpur (Respondent No.1) under Section 10 of the Act, 1947.

The Labour Court, Jodhpur, while dismissing the claim of the petitioner vide its award dated 1.4.2003 (Annexure 1), held that the petitioner has failed to establish his case that he has worked for 240 days in a calendar year under the respondents-university.

Being aggrieved by the award dated 1.4.2003 (Annexure 1), the petitioner has preferred the instant petition.

It is contended by the learned counsel for the petitioner that the petitioner filed his statement of claim on 27.8.1999 before the Respondent No.1, in which he stated that he was appointed under the respondent – university on 3.12.1992 and he worked there continuously till 29.2.1996. He also stated in the statement of claim that on 1.3.1996, when he went to perform the work, he was orally informed by the respondent that his services have been terminated.

It is further contended by the learned counsel for the petitioner that he has been retrenched without complying with the provisions of Section 25-F and 25-G of the Act, 1947. The petitioner submitted a copy of the certificate dated 16.6.1995(Annexure 3), in order to establish the fact that he has worked under the respondent – university for two years.

It is also contended that the respondents filed their reply to the statement of claim on 21.10.2000 and stated that the petitioner was never given any appointment on any substantial post by university and his services were taken on the playgrounds only on certain special occasions. Thus, according to the respondents, the petitioner has last worked under them from 15.3.96 to 15.4.96 only.

In support of the statement of claim, the petitioner filed his affidavit on 27.3.2001, in which he reiterated the contents mentioned in the statement of claim and stated that he is out of employment since the date of his termination.

In order to establish his right that he has completed 240 days in a calendar year, the petitioner filed an application on 16.7.2002 before the Labour Court for summoning the attendance register and payment register from the respondents. This application was dealt with in the Court record, but no specific finding regarding the application has been given, therefore, the learned counsel submityed that the presumption may be drawn against the respondents-authority and the matter be decided according to law. It is further submitted that the Labour Court has decided the whole issue solely on the

basis of the affidavit filed by the respondents-authority, without taking into consideration this important aspect of the matter. It is also submitted that the documents which were lying with the respondents-authority, were not intentionally produced by them.

Mr.D.C.Sharma, learned counsel for the respondents, has vehemently argued that whatever alleged by the petitioner in the claim petition, has been taken into consideration by the Labour Court in its right perspective. The petitioner has not continuously worked with the respondents-university from 3.12.1992 to 1.3.1996. He also argued that the Labour Court, during the course of enquiry, appreciated the reply filed by the respondents-university and after making a fact finding enquiry, has given complete and sufficient reasons and there is no scope available to the petitioner to assail the same.

Heard learned counsel for the parties.

I have examined all the relevant documents as well as arguments advanced before me by the learned counsel for the parties and scanned the impugned award dated 1.4.2003 (Annexure 1) passed by the Labour Court, Jodhpur. Sofar as the completion of 240 days is concerned, the petitioner has mentioned this fact in his claim petition that he has completed 240 days. He has also moved an application on 16.7.2002 before the Labour Court to give direction to the respondents-university to bring the relevant documents and produce the same before the Court. That application was dealt with by the Labour Court, but no finding regarding this fact was given by it whether the required document was ordered to be produced and whether the document was produced by the respondents-university, during the

course of enquiry.

In these circumstances, presumption can be drawn against the respondents-university that the respondents -authority has failed to controvert this fact before the Labour Court. In spite of that, the Labour Court has decided the issue, without taking into consideration this important aspect of the matter and observed that the petitioner has failed to establish the fact that he has completed 240 days in a calendar year. The burden lies on the respondents-authority to discharge, but the same has not been discharged by them, so the presumption should be drawn against the respondents-university and not against the petitioner.

In this view of the matter, in the interest of justice, I deem it just and proper to quash the impugned award dated 1.4.2003 (Annexure 1), passed by the Labour Court, Jodhpur and remand the matter back to the Labour Court to decide it afresh, after affording a reasonable opportunity of hearing to both the parties. The Labour Court shall call for all the relevant record and decide the matter expeditiously, in accordance with law, preferably within a period of three months from the date of receipt of a certified copy of this order.

Both the parties are directed to appear before the Labour Court on or before March 10, 2004.

With the aforesaid directions, the writ petition stands allowed. There will be no order as to costs.

(R.P.VYAS),J.

CKThanvi/scd.